Appendix N: Cassational Complaint

Federal Arbitrazh Court for
the Urals Circuit
[address]

Respondent: State Tax Inspectorate for the City of Satka, Chelyabinsk Oblast
[address]

Plaintiff: OAO "Kombinat Magnezit"
[address]

CASSATIONAL COMPLAINT

On the Decision of the Arbitrazh Court for Chelyabinsk Oblast of May 26 1999 in the Case No. A76-3051/99/39-102 on the suit of OAO "Kombinat Magnezit" against the State Tax Inspectorate of the City of Satka

By a decision of the Arbitrazh Court of Chelyabinsk Oblast of 26 May 1999, the claims of the suit of OAO "Kombinat Magnezit" were satisfied in full and the decision of the State Tax Inspectorate [STI] of the City of Satka No. 75 was recognized as void.

We consider that in the issuance of the decision and decree the norms of substantive law were violated, and we therefore are unable to agree with it for the following reasons:

By the Law of the RF "On the Value Added Tax [VAT]" (taking account of the later amendments and additions) and the Instructions of the STI of the RF of 11/10/95 No. 39, "On the procedure for the calculation and payment of VAT" (taking account of the later amendments and additions) it is determined that "goods of own production and also those acquired, which are exported beyond the bounds of the member-states of the CIS, and work and services exported beyond the bounds of the member-states of the CIS, are freed from VAT, after documentary confirmation of the actual export of the goods (work, services).

The named instruction and the amendments in it, before coming into force, underwent mandatory registration with the Ministry of Justice of the RF for the purpose of confirmation of its consistency with the Constitution of the RF and other legislative acts.

The provisions contained in the above-stated points of the instructions do not amend or make additions to, but only determine the procedure for the realization of the legislative norms.

In the verification of the documents presented, in particular freight customs declarations, only the fact of the transit of the freight over the border of the Russian

Federation was reflected and the freight remained in the territory of the CIS countries, which contradicts the conditions of the above-stated instruction No. 39 [for release from VAT]. (Act of tax verification in place, pages 10, 13 and 20).

By the amendments and additions No. 4 to Instruction No. 39, it was established that along with other conditions determining the export regime for realization of goods, transport, customs or other documents with the notation of the border customs bodies of the member states of the CIS or of the customs bodies of the countries located beyond the bounds of the CIS, which confirm the export of goods coming from Russia beyond the bounds of the member states of the CIS, would serve as the basis for the receipt of the [tax] privilege.

It follows that the privileges in respect of the VAT, in accordance with the above-stated Law, are provided to economic subject only upon the export of the goods (work, services) into third countries, beyond the bounds of the member-states of the CIS.

We direct attention also to the fact that the Supreme Court of the RF in its decision of 23/09/97 No. GKPI 97-368, and of 07/08/97 No. GKPI 97-327, recognized the points of the instruction of the State Tax Service No. 39 of 11/10/95 restricting the group of export operations in which such export is recognized as realization beyond the bounds of the member countries of the CIS as being consistent with effective legislation. In accordance with point 3 of Article 10 of the Law of the RF "On the Value Added Tax," instructions on the application of the stated Law are to be elaborated and published by the State Tax Service of the RF in cooperation with the Ministry of Finances of the RF. The provisions of the Instructions are completely in agreement with the requirements of point 2 of Article 10 of the stated Law of the RF "On the VAT" and with the inter-governmental decision of the countries-participants of the CIS on the given question of 13/11/92.

The above-stated Law of the RF "On the VAT" and Instruction No. 39 regulate the provision of privileges on the basis of the export of goods beyond the bounds of the member-countries of the CIS (upon the presentation of the necessary documents, confirming the transit of the freight over the borders of the given country) and not according to the place of the factual location of the purchaser of the products; and in and of itself the location of a foreign firm in a third country does not give the right to the privilege on the exported goods, if the goods themselves stay within the territory of the member-countries of the CIS.

Thus, the argument of the court that the owner of the goods may dispose of the goods at his discretion is certainly correct, however, there is no basis for the provision of the [tax] privileges.

On the basis of that set forth, we consider that the decision of the STI on the application of sanctions for a violation of the law as a result of the improper application of the privileges No. 75 of March 23, 1999, in the part concerning the exaction of the VAT and of penalties and financial sanctions, is in accord with effective legislation and we request that the court of the first instance be reversed.

Head of the Inspection
Adviser of the Tax Service of the
First Rank [signature] V. P. Korochkin